

IOWA DISTRICT COURT, FIFTH JUDICIAL DISTRICT

**IN RE TEMPORARY CLOSURE OF
COURTS OF THE FIFTH JUDICIAL
DISTRICT**

ADMINISTRATIVE ORDER 2009-15

On February 2, 2009, the Iowa Supreme Court entered a Supervisory Order dealing with fiscal year 2009 budget cuts. This Supervisory Order closed all court offices and required all non-judicial court employees to take a day of unpaid leave on February 16, 2009 and additional days as may become necessary. On February 27, 2009 a second Supervisory Order dealing with fiscal year 2009 budget cuts was issued by the Supreme Court designating additionally required court closures and employee unpaid leave days. Specifically those additional closure days are March 20, April 10, April 24, May 8, May 22, June 5 and June 19, 2009. The February 27, 2009 Supervisory Order also states in paragraph 2,:

"In light of these court closures, beginning on March 24, 2009, all offices of the clerks of the district courts shall be closed to the public from 2:30 p.m. until close on Tuesdays and Thursdays. Such closings shall be for the purpose of allowing clerks' staffs an uninterrupted opportunity to catch up on backlogs. This directive shall remain in force until further order of the court."

Because of the volume of papers ordinarily filed in the Clerk's offices of Fifth Judicial District on a regular business day, the Court cannot operate on whole days when the Clerk's offices are closed, due to the unavailability of clerk's staff. Judges cannot conduct business as usual without support staff.

Paragraph 9 of the Supreme Court's February 2, 2009 Supervisory Order provides:

(9) If a deadline imposed by statute or court rule for issuing an order, conducting a hearing, or sending a notice falls on a day the Clerk of District Court is closed by this order, the time period for such action shall be extended until 4:30 PM of the next day the Clerk of Court is open.

Paragraph 3 of the Supreme Court's February 27, 2009 Supervisory Order provides:

(3) Iowa Code Section 4.1(34) (2009) provides that when the last day for commencement of an action or proceeding, the filing of a pleading or motion in a pending action or proceeding, or the perfecting of an appeal falls on a day on which the clerk of court is closed in whole or in part pursuant to the authority of the supreme court, the time shall be extended to include the next day that the office of the clerk of court is

open. In accordance with this provision and in light of the early closure to the public of clerks' offices, the deadlines specified in the statutes will be extended as provided therein. (Emphasis added).

In order to implement the Iowa Supreme Court's Supervisory Orders, the Fifth Judicial District takes the following administrative action concerning the operation of the district court on March 20, April 10, April 24, May 8, May 22, June 5, and June 19, 2009, as well as on Tuesday and Thursday afternoons beginning March 24, 2009 from 2:30 to 4:30 p.m. when the clerks' of court offices are closed to the public as may be necessary to balance the Judicial Branch budget:

NOW THEREFORE IT IS HEREBY ORDERED:

1. Judges Available For Emergencies Only on Court Closure Days.

The Courts of the Fifth Judicial District shall be closed on March 20, April 10, April 24, May 8, May 22, June 5, June 19, 2009 and any other designated non-judicial court employee unpaid leave days. By statute and pursuant to the Supervisory Order, judges cannot legally utilize unpaid leave days. Therefore, on the days of unpaid leave for non-judicial court employees, the Judges of the Fifth Judicial District shall work in the chambers of their county domicile courthouse during regular business hours unless they take paid vacation with the approval of the Chief Judge. Due to the absence of support staff and the resulting clerks' office closures, judges and the courts are available to the public for emergency matters only on unpaid leave days. All court matters scheduled for an unpaid leave day as designated above shall be continued to the next regularly available hearing date. However, any criminal trial in which speedy trial has not been waived and the speedy trial deadline is imminent that is currently scheduled for an unpaid leave day shall begin or continue on the next day the court is open.

If a part-time Magistrate is regularly scheduled to work on a temporary leave day, the Magistrate shall reschedule his or her time to be available for work on days when the Clerk's Office is open in whole or in part. In Polk County only, the Magistrates shall coordinate this through the District Court Administrator.

For Tuesday and Thursday afternoons from 2:30 to 4:30 p.m. beginning Monday, March 24, 2009 court proceedings shall continue as scheduled for the duration of the workday. If a jury trial is in session, a staff person from the clerk's office will be made available to check out jurors

as needed at the end of the trial/day upon receiving a communication by the judge, or court attendant as available. Judges, court reporters, juvenile court services staff and court administration staff may have access to and file orders with a clerk's office for proceedings conducted during or concluding in the afternoons at issue. But in no other case may other legal paperwork be filed with a clerk's office during the closure hours in order to allow the uninterrupted work time. Additionally, no writs or other documents will be issued, nor will payments be accepted or other business conducted by a clerk's office for public customers until the next day that the office of the clerk of court is open.

2. Initial Appearances.

Judges and Magistrates will not be available for initial appearances on unpaid leave days due to the unavailability of court staff. Polk County jail court shall be closed on days of unpaid leave.

Iowa Court Rule 2.2(1) provides in pertinent part:

(1) Initial Appearance of Defendant. An officer making an arrest with or without a warrant shall take the arrested person without unnecessary delay before a committing magistrate as provided by Rule 2.27.

Iowa Court Rule 2.1(d) defines "unnecessary delay" as follows:

d. Unnecessary delay is any unexcused delay longer than twenty-four (24) hours, and consists of a shorter period whenever a magistrate is accessible and available.

Pursuant to paragraph 9 of the Supervisory Order, the deadline for initial appearance of defendants who remain in custody is extended to 4:30 P.M. on the next day the clerk of court is open. Any resulting delay longer than twenty-four (24) hours after arrest is thus necessary and excused because of the unavailability of court staff on unpaid leave days. All out of custody initial appearances shall be continued on unpaid leave days in accordance with the Supervisory Order. Magistrates and District Associate Judges should continue to conduct initial appearances on weekends and holidays in accordance with ordinary protocols.

3. Detention and Shelter Care Hearings.

Iowa Code Section 232.22(4) sets forth the time for holding a juvenile in a detention facility as follows:

4. A child shall not be held in a facility under subsection 3, paragraph "a" or "b" for a period in excess of twenty-four (24) hours without an oral or written court order authorizing the detention. When the detention is authorized by an oral court order, the Court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order.

Iowa Code Section 232.21(4) sets forth the time for holding a child in shelter care as follows:

4. A child placed in a shelter care facility under this section shall not be held for a period in excess of forty-eight hours without an oral or written court order authorizing the shelter care. When the action is authorized by an oral order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order.

Iowa Code Section 232.44(1) concerning the time for holding shelter care and detention hearings provides in pertinent part:

1. A hearing shall be held within forty-eight hours, excluding Saturdays, Sundays and legal holidays, of the time of the child's admission to a shelter care facility, and within twenty-four hours, excluding Saturdays, Sundays and legal holidays, of a child's admission to a detention facility....

Pursuant paragraph 9 of the Supervisory Order, when the deadline for a juvenile detention or shelter care hearing and order falls on a day of closure due to the unpaid leave days, the deadline for a detention or shelter care hearing and order is extended to 4:30 P.M. the next day the office of the clerk of court is open. Detention and shelter care hearings shall not be conducted on the unpaid leave days due to the unavailability of court support staff and juvenile court officers. For Friday court closure days through June 19, 2009, Friday shelter care hearing may be expedited to Thursday on a case-by-case basis.

The offices of Juvenile Court Services shall be closed on unpaid leave days. Pursuant to the Supervisory Order requiring all non-judicial court employees to take unpaid leave on these days, juvenile court officers and staff of juvenile court services shall not be on call using pagers or cell phones on the unpaid leave days between 12:01 A.M. and 11:59 P.M. There shall be no expectation that juvenile court officers will be available to receive calls at home or elsewhere while on unpaid leave.

4. Mental Health and Substance Abuse Commitments.

Iowa Code Section 125.75 provides, in part, that:

Proceedings for the involuntary commitment or treatment of a chronic substance abuser to a facility may be commenced by the county attorney or an interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located or which is the respondent's place of residence. The clerk or the clerk's designee shall assist the applicant in completing the application.

Iowa Code Section 125.91 provides, in part, that:

1. The procedure prescribed by this section shall only be used for an intoxicated person who has threatened, attempted, or inflicted physical self-harm or harm on another, and is likely to inflict physical self-harm or harm on another unless immediately detained, or who is incapacitated by a chemical substance, if that person cannot be taken into immediate custody under sections 125.75 and 125.81 because immediate access to the court is not possible.

Iowa Code Section 229.6 provides, in part, that:

Proceedings for the involuntary hospitalization of an individual may be commenced by any interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located, or which is the respondent's place of residence. The clerk, or the clerk's designee, shall assist the applicant in completing the application.

Iowa Code Section 229.22 provides, in part, that:

1. The procedure prescribed by this section shall not be used unless it appears that a person should be immediately detained due to serious mental impairment, but that person cannot be immediately detained by the procedure prescribed in sections 229.6 and 229.11 because there is no means of immediate access to the district court.

Pursuant to the February 27, 2009 Supervisory Order Paragraph 2, beginning on March 24, 2009, all offices of the clerks of the district courts shall be closed to the public from 2:30 p.m. until close on Tuesdays and Thursdays. In accordance with this Administrative Order Numbered Paragraph 1, there is no means of immediate access to the district court by the procedures prescribed in sections 125.75, 125.81, 229.6 and 229.11. Therefore, all mental health and substance abuse commitment proceedings on Tuesday and Thursday afternoons from 2:30 p.m. until 4:30 p.m. beginning March 24, 2009 shall proceed by the emergency provisions of 125.91 and 229.22 until further order of the court.

Iowa Code Sections 229.11 and 125.81 provide that mental health and substance abuse commitment hearings "shall be held no more than five days after the date of the order, except that if the fifth day is a Saturday, Sunday, or a holiday, the hearing may be held on the next succeeding business day."

Pursuant to paragraph 9 of the Supervisory Order, the deadline for conducting these commitment hearings is extended until 4:30 PM on the next day the office of the clerk of court is open. Therefore, commitment hearings scheduled on unpaid leave days of support staff shall be continued to the next business day. However, for future unpaid leave day which fall on a Friday, Friday commitment hearings may be expedited to Thursday on a case-by-case basis. Specifically in Polk County, adult mental health and substance abuse commitment hearings regularly scheduled on Friday court closure days shall be moved to March 19 April 9, April 23, May 7, May 21, June 4, June 18, 2009.

5. Domestic Abuse Emergencies.

Iowa Code Section 236.6 provides, in part, that:

1. When the court is unavailable from the close of business at the end of the day or week to the resumption of business as the beginning of the day or week, a petition may be filed before a district court judge, or district associate judge designated by the chief judge of the judicial district...who may grant emergency relief.... if [the] judge deems it necessary to protect the plaintiff from domestic abuse.....

2. An emergency order issued under subsection 1 shall expire seventy-two hours after issuance. When the order expires, the plaintiff may seek a temporary order from the court pursuant to section 236.4.

Pursuant to the Supervisory Order Paragraphs 1, the office of the clerk of court is closed on the unpaid leave days and in accordance with this Administrative Order Numbered Paragraph 1, the court is unavailable for regular court business. Therefore, domestic abuse emergencies shall be conducted in accordance with Iowa Code Section 236.6. Specifically in Polk County, the Family Law Judges Karen Romano and Michael Huppert are designated to grant relief in domestic abuse emergencies during the hours of 8 a.m. to 4:30 p.m. on unpaid leave days, and for juvenile domestic abuse petitions the juvenile judge on call as noted below in section 6 of this order shall preside. In 5A and 5B Counties of the Fifth Judicial District, all district and district associate court judges are designated to grant relief in domestic abuse emergency cases on unpaid leave days in the manner normally followed during non-business hours.

For 5A and 5B Counties on Tuesday and Thursday afternoons from 2:30 to 4:30 p.m. beginning Monday, March 24, 2009, a judge will be available to issue temporary protective

orders pursuant to Iowa Code Section 236.4. In counties where a district court judge is assigned to preside on the applicable Tuesday or Thursday, petitions for domestic abuse will be provided by the court to petitioners through the district court judge and court reporter. In counties where solely a district associate court judge is assigned to preside on the applicable Tuesday or Thursday, petitions for domestic abuse will be provided by the court to petitioners through the district associate court judge and court reporter. In all such cases upon hearing, the judge or court reporter will file the Petition and any resulting Temporary Protective Order with the clerk's office, who will enter such order on the State Registry.

In counties without a presiding district or district associate court judge on the applicable Tuesday or Thursday, or when the presiding and/or resident judge has notified the clerk's office that he or she will not be at the courthouse due to preapproved leave through the chief judge, clerk's staff shall leave petitions for domestic abuse relief, both juvenile and adult, on the counter or in envelopes attached to the door to their office. Signs, to be provided by court administration, shall be posted instructing petitioners to fill out the appropriate petition and contact Court Administration at 1-800-532-1429. Upon locating an available judge, court administration shall contact the clerk's office where the petitioner is waiting, and have them fax the petition to the judge. Such judge will review the petition and fax back the resulting order to the applicable clerk's office. A staff member from the clerk's office will provide a copy of the order to the petitioner and enter, as appropriate, any resulting Temporary Protective order on the State Registry.

In 5C Polk County on Tuesday and Thursday afternoons from 2:30 to 4:30 p.m. beginning Monday, March 24, 2009, the court will be available to issue temporary protective orders pursuant to Iowa Code Section 236.4. Petitions for adult domestic abuse will be provided by the court to petitioners through the district court judge and court reporter in either courtroom 412 or 413. Petitions for juvenile domestic abuse will be provided by the court to petitioners through the judge assigned to juvenile court as set out in numbered paragraph 6 below. In all such cases upon hearing, the judge or court reporter will file the Petition and any resulting Temporary Protective Order with the clerk's office, who will enter such order on the State

Registry.

6. Other Emergencies and On-Call Procedures for Polk County.

Pursuant to Administrative Order 2008-40, the designated on-call judge shall respond to after hours emergency on-call duty until 8 a.m. and after 4:30 p.m. on unpaid leave days. From the hours of 8 a.m. to 4:30 p.m., the district court judge assigned to Criminal Number 1, Courtroom 204 – Judge Douglas Staskal shall respond to all criminal emergency matters including search warrants and arrest warrants. Mental Health and Substance Abuse emergencies, and other special situations or matters requiring immediate attention shall be covered by the following judges during business hours on the designated court closure days:

March 20	Gamble
April 10	Hanson
April 24	Nickerson
May 8	Paulsen
May 22	Pille
June 5	Schemmel
June 19	Blane

The following Polk County judges serving in juvenile court shall be the on-call judge for emergency juvenile matters on the designated court closure days:

March 20	Fultz
April 10	Cohen
April 24	Jacobs
May 8	Smith
May 22	Egly
June 5	Fultz
June 19	Cohen

In all other counties of the Fifth Judicial District, any district court or district associate court judge first contacted on unpaid leave days may handle all other emergency court matters.

7. Paragraph 6 of the Supreme Court's February 27, 2009 Supervisory Order provides:

No judicial branch employee who is paid an hourly wage shall be allowed to work more than his or her allocated hours in any given pay period unless authorized in advance by the district court administrator for purposes of working at a jury trial.

All clerks' offices, JCS and court administrative staff in hourly wage positions shall strictly observe the official office hours as set out in the Iowa Judicial Branch personnel Policies.

Such hours are 8 a.m. to 4:30 p.m., 40 hours per work week except during weeks with designated court closure days, which are then 32 hours per work week. A full and complete one hour lunch break is required.

All judges and magistrates of the Fifth Judicial District, as well as clerks of court, the DCA and other supervisory staff are responsible for ensuring staff are given sufficient time to enjoy the complete one hour lunch break during the work day. Likewise, judicial officers and supervisory staff are responsible to ensure all hourly wage staff end work by 4:30 p.m. and are not kept over in violation of the Supreme Court's February 27, 2009 Supervisory Order. The only exceptions to these work hour parameters are for purposes of a jury trial or allowing employees of the clerk of court offices to assist an individual who comes to the office near the end of business hours seeking a DA protective order, or a MH or SA involuntary commitment order if approved in advance by the DCA or her designees, Anne Sheeley or Billie Ramey. Approval should be documented through an E-mail communication. Generally this discretion with respect to jury trials will only be utilized for purposes of juror lunch accommodations.

Dated this 18th day of March, 2009.


ARTHUR E. GAMBLE, CHIEF JUDGE
Fifth Judicial District of Iowa

Copies to:

Marsha Ternus, Chief Justice
Michael Streit, Liaison Justice
David Boyd, State Court Administrator
Ken Bosier, IT Director
Elizabeth Baldwin, District Court Administrator
All Fifth Judicial District Judges
All Fifth Judicial District Magistrates
All Fifth Judicial Clerks of the District Court and staff
Marilyn Lantz, Chief Juvenile Court Officer
All Fifth Judicial District Asst. DCA's, Case Coordinators, Court Attendants and Judicial Assistants
All Fifth Judicial District Court Reporters
All Fifth Judicial District Juvenile Court Services Staff
All Fifth Judicial District County Sheriffs
All Fifth Judicial District County Attorneys
Polk County Youth Services
All Fifth District Boards of Supervisors
Polk County Bar Association
5B Bar Association
All 5A Bar Associations
All Fifth Judicial District Mental Health Advocates
Wendy Rickman, DHS, Des Moines Area SAM
Mark Smith, Acting State Public Defender
Valerie Wilson, Polk County Public Defender
Kathy Miller, Polk County Juvenile Public Defender
Mike Sorci, Youth Law Center